



Reprinted
February 27, 2003

HOUSE BILL No. 1751

DIGEST OF HB 1751 (Updated February 26, 2003 2:43 PM - DI 96)

Citations Affected: IC 22-5.

Synopsis: Employee review of personnel records. Provides that, upon written request from an employee, an employer shall provide the employee with an opportunity to review the employee's personnel records under certain circumstances. Provides a procedure to follow if the employee disagrees with the information contained in the personnel record. Provides that a court shall award damages, reasonable attorney's fees, and costs to the employee if the employer violates any of these provisions.

Effective: July 1, 2003.

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January 21, 2003, read first time and referred to Committee on Labor and Employment.
February 18, 2003, reported — Do Pass.
February 26, 2003, read second time, amended, ordered engrossed.

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HB 1751—LS 7141/DI 96+



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1751

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 6. Employee's Access to Personnel Records**

5 **Sec. 1. As used in this chapter, "employee" means an individual:**

- 6 (1) employed by;
7 (2) permitted to work by;
8 (3) who performs a service for remuneration for; or
9 (4) who is under any contract of hire, written or oral, express
10 or implied, with;

11 **an employer in any occupation.**

12 **Sec. 2. As used in this chapter, "employer" means:**

- 13 (1) an individual;
14 (2) a partnership;
15 (3) an association;
16 (4) a limited liability company;
17 (5) a corporation;

HB 1751—LS 7141/DI 96+



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1 (6) a business trust;
 2 (7) the state; or
 3 (8) a governmental agency or political subdivision;
 4 with at least four (4) employees at the same time.

5 Sec. 3. As used in this chapter, "personnel record" means a
 6 record kept by an employer that identifies the employee, to the
 7 extent that:

8 (1) the record:

9 (A) is used;

10 (B) has been used; or

11 (C) may be used;

12 to determine the employee's qualifications for employment,
 13 promotion, transfer, additional compensation, or disciplinary
 14 action; or

15 (2) the record may affect the determination described in
 16 subdivision (1).

17 Sec. 4. For the purposes of this chapter, a personnel record
 18 includes a record in the possession of:

19 (1) a person;

20 (2) a corporation;

21 (3) a partnership; or

22 (4) another association that has a contractual agreement with
 23 the employer to keep or supply a personnel record as
 24 provided in this article.

25 Sec. 5. For purposes of this chapter, a personnel record does not
 26 include any of the following:

27 (1) Employee references supplied to an employer if the
 28 identity of the person making the reference would be
 29 disclosed.

30 (2) Materials relating to the employer's staff planning with
 31 respect to more than one (1) employee, including salary
 32 increases, management bonus plans, promotions, and job
 33 assignments.

34 (3) Medical reports and records made or obtained by the
 35 employer if the records or reports are available to the
 36 employee from the doctor or medical facility involved.

37 (4) Information of a personal nature about a person other
 38 than the employee if disclosure of the information would
 39 constitute a clearly unwarranted invasion of the other
 40 person's privacy.

41 (5) Records limited to grievance investigations that are kept
 42 separately and that are not used for the purposes provided in



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1 this chapter.

2 (6) Records maintained by an educational institution that are
3 directly related to a student and that are considered to be
4 education records under the Family Educational Rights and
5 Privacy Act of 1974, 20 U.S.C. 1232g.

6 (7) Records kept by an executive, an administrative, or a
7 professional employee that are kept in the sole possession of
8 the maker of the record and that are not accessible or shared
9 with other persons. However, a record concerning an
10 occurrence or fact about an employee kept under this
11 subdivision may be entered into a personnel record:

12 (A) if entered not more than six (6) months after the date
13 of the occurrence or the date the fact becomes known; or

14 (B) if entered more than six (6) months after the date of the
15 occurrence or the date that the fact becomes known, the
16 employer believes that the records separately or together
17 display facts about the employee that may be used in a
18 determination as described in section 3(1) of this chapter.

19 Sec. 6. (a) Upon written request that describes the personnel
20 record, an employer shall provide the employee with an
21 opportunity to periodically review:

22 (1) at reasonable intervals; and

23 (2) not more than one (1) time in a calendar year or as
24 otherwise provided by law or a collective bargaining
25 agreement;

26 the employee's personnel record if the employer has a personnel
27 record for that employee.

28 (b) The review must take place at a location reasonably near the
29 employee's place of employment and during normally scheduled
30 hours of employment for the employee.

31 (c) As part of or after the review provided in subsection (a), an
32 employee may obtain without cost to the employee a copy of the
33 information or part of the information contained in the employee's
34 personnel record.

35 Sec. 7. If an employer enters a record into a personnel record
36 under section 5(7)(A) or 5(7)(B) of this chapter, the employer must
37 notify the employee of the entry into the personnel record within
38 three (3) calendar days of the entry. The procedures set forth in
39 section 9 of this chapter control a disagreement by the employee
40 with information contained in the entry.

41 Sec. 8. Notwithstanding the limitations of review of a personnel
42 record set forth in section 6(a)(2) of this chapter, if an employee is

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1 notified that any disciplinary action, including, but not limited to:

- 2 (1) suspension;
- 3 (2) demotion; or
- 4 (3) termination;

5 is being considered, the employee may request, in writing, a copy
6 of the employee's personnel record, subject to the exceptions
7 contained in section 5 of this chapter. The employee's written
8 request for the personnel record must include the address to which
9 the personnel record is to be delivered. The copy shall be provided
10 without cost to the employee and within five (5) work days or at the
11 time of the disciplinary action, whichever is earlier.

12 Sec. 9. (a) If there is a disagreement concerning information
13 contained in a personnel record:

- 14 (1) removal; or
- 15 (2) correction;

16 of that information may be mutually agreed upon by the employer
17 and the employee.

18 (b) If an agreement is not reached under subsection (a), the
19 employee may submit a written statement explaining the
20 employee's position. The statement may not exceed five (5) sheets
21 of eight and one-half (8 1/2) by eleven (11) inch paper. If the
22 information over which there is a disagreement is included in the
23 employee's personnel record, the statement shall be included with
24 information contained in the personnel record if the information
25 is divulged to a third party.

26 (c) If either the employer or employee knowingly places or
27 causes to be placed in the personnel record false information, the
28 employer or employee, whichever is appropriate, has a remedy
29 through legal action to have that information expunged.

30 Sec. 10. This chapter may not be construed to diminish a right
31 of access to records as provided in IC 5-14-3 or as otherwise
32 provided by law.

33 Sec. 11. If an employer violates this chapter, an employee may
34 commence an action in a circuit or superior court to compel
35 compliance with this chapter. A court with jurisdiction in:

- 36 (1) the county in which the employee resides;
- 37 (2) the county in which the employee is employed; or
- 38 (3) the county in which the personnel record is maintained;

39 has jurisdiction to hear the matter.

40 Sec. 12. For a violation of this chapter, the court shall award an
41 employee:

- 42 (1) actual damages;

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- 1 **(2) reasonable attorney's fees; and**
- 2 **(3) costs.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1751, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LIGGETT, Chair

Committee Vote: yeas 12, nays 2.

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HB 1751—LS 7141/DI 96+



HOUSE MOTION

Mr. Speaker: I move that House Bill 1751 be amended to read as follows:

Page 3, line 11, delete "record" and insert "**record:**
(A)".

Page 3, line 13, delete "known." and insert "**known; or**
(B) if entered more than six (6) months after the date of the
occurrence or the date that the fact becomes known, the
employer believes that the records separately or together
display facts about the employee that may be used in a
determination as described in section 3(1) of this chapter.".

Page 3, line 18, delete "two (2) times" and insert "**one (1) time**".

Page 3, line 26, delete "If an employee demonstrates that the employee is unable to".

Page 3, delete lines 27 through 31.

Page 3, line 32, delete "Sec. 7. (a)".

Page 3, run in lines 26 through 32.

Page 3, line 32, delete "section 6 of".

Page 3, line 33, delete "this chapter," and insert "**subsection (a)**".

Page 3, line 33, after "obtain" insert "**without cost to the employee**".

Page 3, delete lines 36 through 39, begin a new paragraph and insert:

"Sec. 7. If an employer enters a record into a personnel record under section 5(7)(A) or 5(7)(B) of this chapter, the employer must notify the employee of the entry into the personnel record within three (3) calendar days of the entry. The procedures set forth in section 9 of this chapter control a disagreement by the employee with information contained in the entry.

Sec. 8. Notwithstanding the limitations of review of a personnel record set forth in section 6(a)(2) of this chapter, if an employee is notified that any disciplinary action, including, but not limited to:

- (1) suspension;**
- (2) demotion; or**
- (3) termination;**

is being considered, the employee may request, in writing, a copy of the employee's personnel record, subject to the exceptions contained in section 5 of this chapter. The employee's written request for the personnel record must include the address to which the personnel record is to be delivered. The copy shall be provided without cost to the employee and within five (5) work days or at the time of the disciplinary action, whichever is earlier."

HB 1751—LS 7141/DI 96+



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Page 3, line 40, delete "8." and insert "**9.**".

Page 4, line 16, delete "9." and insert "**10.**".

Page 4, line 19, delete "10." and insert "**11.**".

Page 4, line 26, delete "11. The" and insert "**12. For a violation of this chapter, the**".

Page 4, line 26, delete "employee prevailing in an" and insert "**employee:**".

Page 4, delete line 27.

Page 4, line 28, delete "For a violation of this chapter,".

Page 4, line 28, delete "damages plus costs." and insert "**damages;**".

Page 4, line 29, delete "For a willful and knowing violation of this chapter, an" and insert "**reasonable attorney's fees; and (3) costs.**".

Page 4, delete lines 30 through 35.

(Reference is to HB 1751 as printed February 19, 2003.)

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